



# REAL ESTATE BULLETIN

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## Bruce W. Moyer Education Director

Bruce W. Moyer, Ed.S., DREI, has been named Director of Education and Licensing effective February 1.



**Moyer**

Moyer joined the Commission as Education and Licensing Officer in 2012.

He holds an Educational Specialist's Degree (Master's +30 in Education) from the University of South Carolina, and holds the DREI (Distinguished Real Estate Instructor) designation from the national Real Estate Educators Association.

For 10 years in Charlotte, Moyer was principal broker and broker-in-charge of his own firm, Urban Realty, and for two years a broker with Keller Williams Realty South Park in Charlotte.

He taught real estate prelicense, postlicense, and continuing education at Superior School of Real Estate for five years.

The primary responsibility of the Director of Education and Licensing is to plan and direct the Commission's education, examination, and licensing programs and operations on a statewide basis.

### Rule Changes

For a summary of proposed rule changes to be effective July 1, 2014, please visit the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov).

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## Bell, Craver, Wagoner Receive New Commission Appointments

George Bell of Winston-Salem, Leonard H. "Tony" Craver, Jr., of Durham, and Anna Gregory Wagoner of Winston-Salem, have been appointed to the Real Estate Commission by Governor Pat McCrory for three-year terms ending July 31, 2016, it was announced by Miriam J. Baer, Executive Director.

The new members succeed Laura B. Bromhal of Raleigh, Jeffery J. Malarney of Wanchese, and Benjamin Cone III of Raleigh.



**Bell**

### George Bell

Bell is president of G. Bell Productions, Inc., a real estate education firm serving real estate brokers across North Carolina, and Principal Broker of G. Bell Properties, a real estate brokerage firm. He is also a consultant to North Carolina real estate brokerage and law firms.

Bell entered the real estate business in 1978, following graduation from East Carolina University with a BS in Business Administration, as a broker, trainer and marketing representative. He has since held sales management, broker-in-charge, broker/owner and education positions with several of the



**Craver**



**Wagoner**

state's largest brokerage firms.

A member of the North Carolina Association of REALTORS' Board of Directors and Executive Committee, Bell also serves on the Legislative and Forms Committees. He is a past president of both the Winston-Salem Regional Association of REALTORS' and the Surry County Board of REALTORS'.

In 2012, he received the Billie J. Mercer Excellence in Education Award from the North Carolina Real Estate Commission and the Educator of the Year Award from the North Carolina Real Estate Educators Association

(See **Commission**, page 9)

## Commission Cracks Down on Firms Offering Illegal Leases, Credit Repair

The Commission recently investigated and disciplined two licensed real estate firms following receipt of complaints from consumers entering into certain residential leases.

The disciplined licensees all engaged in a business model that focused on an option to purchase agreement executed at the time of the lease. In both cases, tenant/buyers would make a significant down payment to obtain an opportunity to purchase the property within a certain time and for a set price.

As a rule, the tenant/buyers were

unqualified for traditional financing, and were promised credit repair programs that would enable them to obtain financing when the time came to buy their home at the end of the lease term.

Problems arose for the formerly licensed firms when many tenant/buyers realized that their rental units were being foreclosed upon in the middle of their tenancy, making their option to purchase worthless.

Others discovered that promises made by the real estate firms regarding

(See **Illegal Leases**, page 6)

## REAL ESTATE BULLETIN

Published as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Commission rules, and proficiency in real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the Commission's Real Estate Bulletin.

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[www.ncrec.gov](http://www.ncrec.gov)

Pat McCrory, Governor

### COMMISSION MEMBERS

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George Bell	Winston-Salem
L. S. "Cindy" Chandler	Charlotte
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Pamela R. Rorie	Continuing Education Officer
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Matthew A. Wentz	License Application Analyst

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Charlene D. Moody	Assistant Director, Legal Counsel
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Stephen L. Fussell	Sr. Consumer Protection Officer
Jean A. Wolinski-Hobbs	Consumer Protection Officer
Glenn M. Wylie	Consumer Protection Officer
Peter B. Myers	Information Officer
Elizabeth W. Penney	Information Officer

**Editor-In-Chief**  
Miriam J. Baer

**Editor**  
Robert L. Forshaw



## Appearances

**Miriam J. Baer**, Executive Director, spoke to the property management group and also the general membership of the Fayetteville Regional Association of REALTORS®.

**Bruce W. Moyer**, Director, Education and Licensing Division, spoke to the Johnston County Association of REALTORS®.

**Janet B. Thoren**, Director, Regulatory Affairs Division, spoke to the High Point Regional Association of REALTORS® and to the Property Managers Seminar of Park Avenue Properties in Charlotte.

*To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, [www.ncrec.gov](http://www.ncrec.gov).*

**S. Adam Stallings**, former Chief Deputy Legal Counsel, spoke to the Berkshire Hathaway Yost & Little Realty in Greensboro.

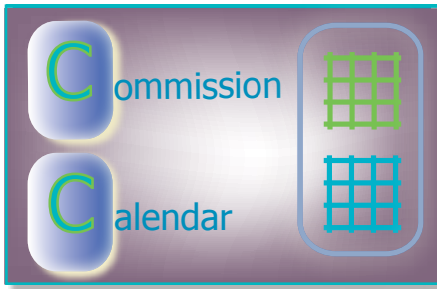
**Jean A. Wolinski-Hobbs**, Consumer Protection Officer, spoke to the Lenoir County Board of REALTORS®.

**Peter B. Myers**, Information Officer, spoke to the BHHS Carolina Realty office in Charlotte, to Fonville Morisey in Cary on agency and hot topics and to the Haywood County Board of REALTORS®.

## Commission Speakers Available

Real Estate Commission staff members are available to speak to your local board, office, or special group. You can request a presentation relating to a specific subject or a general discussion on topics of interest to those attending.

To schedule a speaker, call Janet Thoren at (919) 875-3700, Ext. 112. Please allow at least four weeks prior to your group's meeting.



March 19

April 16

May 21

*All meetings, unless otherwise noted, begin at 9:00 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.*

## Electronic Signatures, Property Management Among 2014-2015 Update Course Topics

The two main topics for the 2014-2015 *Update Course* for the licensing year beginning July 1 will be (1) electronic signatures and electronic record-keeping, and (2) property management issues.

Specifically addressed in the course will be the requirements and considerations of electronic signatures and how to maintain electronic record-keeping.

Discussion of issues relating to property management will cover:

- Any significant recent revisions to landlord-tenant law;

- Rule A.0109(a) and (b) in connection with kickbacks from service providers or inflated invoices that include a fee for broker;

- The Commission's position relating to fees to reserve a rental unit pending lease execution; and

- Fair housing relating to requests for accommodations/modifications, what an owner/agent may ask a tenant to verify, and reasonable restrictions.

Other *Update Course* topics include:

- revised rules and new or revised laws that impact real estate

brokerage;

- working with an unrepresented buyer as Seller agent only when the broker's company has the listing;
- the extent of a broker's duty to discover and disclose the status of public vs. private streets, challenges with discovery, and related issues;
- consideration of when a broker promotes brokerage services or properties utilizing "social media";
- how to keep a current and active license.

## COURSE SCHEDULES

### Broker-in-Charge and Basic Trust Account Procedures Courses

Please see the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), under Course Registration, for locations, dates, and times from March 5-6 thru May 20-21, 2014.

#### Broker-in-Charge Course

Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.

Asheville	May 20-21	Holiday Inn East/Blue Ridge Parkway
Banner Elk	April 7-8	Best Western Mountain Lodge
Concord	March 10-11 April 22-23	Hilton Garden Inn, Concord
Greensboro	May 13-14	Deep River Event Center
Kill Devil Hills	March 26-27	Ramada Inn
Raleigh	March 5-6 April 2-3 May 7-8	McKimmon Center
Wilmington	May 5-6	Best Western Coastline Center

#### Basic Trust Account Procedures Course

Greensboro	May 14, 9 a.m. - 1 p.m.	Deep River Event Center
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See Commission Web site to confirm course dates.

# Some commercial brokers have been surprised to learn that the Real Estate License Law (Chapter 93A of the North Carolina General Statutes) and the Commission's rules apply to commercial brokers as well as residential brokers. While there are some laws and rules that apply only in residential transactions, in general, most apply to both residential and commercial brokers alike. Here is a brief review of some important laws and rules that apply to everyone.

## Commercial and Residential Brokers Follow Same Laws, Commission Rules

By Stephen L. Fussell, Senior Consumer Protection Officer

Some commercial brokers have been surprised to learn that the Real Estate License Law (Chapter 93A of the North Carolina General Statutes) and the Commission's rules apply to commercial brokers as well as residential brokers. While there are some laws and rules that apply only in residential transactions, in general, most apply to both residential and commercial brokers alike. Here is a brief review of some important laws and rules that apply to everyone.

Any person or firm must first obtain a real estate license to engage in commercial or residential real estate brokerage activities. Commercial or residential real estate firms other than sole proprietorships must obtain separate firm licenses. An out-of-state broker who wishes to engage in commercial transactions in North Carolina may choose to either obtain a North Carolina broker license or a limited non-resident commercial broker license requiring affiliation with a resident North Carolina broker.

In both commercial and residential sales transactions:

- Brokers must review the *Working With Real Estate Agents* brochure with prospective buyers and sellers at first substantial contact. (Note: The brochure is not required for leasing transactions. Although the North Carolina Association of REALTORS® (NCAR) has created a form for use by its members

in commercial leasing transactions, use of NCAR's form is not required by the Commission.)

- A commercial or residential *listing agent* must enter into a written listing agreement before beginning to market a seller's property, including placing a "For Sale" sign on a seller's property.

- A commercial or residential *buyer agent* must enter into a written buyer agency agreement no later than the point at which a buyer-client is ready to write an offer. Dual agency is permitted only after obtaining the advance, written authorization of all parties or sets of parties. Any broker who fails to properly establish his or her agency relationship in writing in a transaction is prohibited by law from receiving any compensation either directly or indirectly from the transaction.

Similarly, in commercial or residential leasing transactions:

- Brokers who represent *landlords* must enter into written property management agreements before beginning to market or manage the landlords' properties.

- Brokers who represent a commercial or residential *tenant* must enter into a written agency agreement with the tenant no later than the point at which the tenant is ready to negotiate or sign a lease. Dual agency requires the advance, written authorization of all parties. Brokers, who represent landlords or tenants without written agency agreements, are prohibited from receiving compensation from those transactions.

Commercial and residential brokers must also handle trust monies in accordance with the Commission trust account rules, disclose material facts, retain transaction records for three years, and furnish all parties with copies of agency agreements and contracts.

This article is not intended to address all of the rules, but to remind both com-

mercial and residential brokers of some of the Commission's requirements. When in doubt about any of the

Commission's rules, brokers should contact the Commission's office and a member of our staff will be glad to provide more information and/or clarification.

### Commercial, Residential Brokerage Fields Differ

If you are a residential broker without commercial brokerage experience or a commercial broker without residential brokerage experience, you will face considerable challenges if you choose to cross the professional line into the other realm.

Most of the real estate laws and Commission rules will apply, as the adjacent article explains, but the day-to-day conduct of business involving, say, a three-bedroom home compared with a three-story office building will differ greatly.

Any residential broker who wishes to venture into commercial real estate or vice versa, should consider partnering with an experienced broker in the new field to better learn both the business and how best to represent clients.

### Broker Numbers

As of February 1, 2014, there is a total of 92,698 brokers licensed by the Real Estate Commission in the following categories:

Active Brokers 56,393

(Active Provisional Brokers 3,584)

Inactive Brokers 25,631

(Inactive Provisional Brokers 4,243)

Firms 10,674





The Commission receives 800 to 1,400 complaints annually, covering every aspect of real estate brokerage plus unrelated issues such as criminal convictions. So, what should you do if a complaint is filed against you?

- First, don't panic. The Commission does not automatically assume that the allegation(s) in a complaint are true. Real estate brokers are considered innocent until proven guilty. However, to fulfill its mission to protect the interests of consumers, the Commission investigates each complaint to determine whether there has been any wrongdoing by a licensee.
- Second, if you receive a Letter of Inquiry from the Commission regarding a complaint, you must respond within fourteen (14) days of its receipt. If you need more time, contact the staff member who sent you the letter and ask for an extension of time to respond. Staff will usually be able to accommodate reasonable requests.
- Third, when responding to a Letter of Inquiry, provide a factual description of the transaction or incident described in the complaint and provide copies of relevant documents to support your statements. The Commission has the authority to expand investigations beyond the allegations described in complaints and may ask you for information and/or documentation regarding other aspects of a transaction or matter. You should fully answer the Letter of Inquiry before the deadline.
- Fourth, you may hire an attorney to represent you in responding to a Letter of Inquiry or when meeting with an Auditor/Investigator; however, it is not a requirement. If you are unsure about whether to obtain legal representation, you may want to discuss your situation with an attorney before deciding.

Cases which cannot be investigated by a Letter of Inquiry or where the broker fails to respond are assigned to

## What To Do When a Complaint Is Filed Against You

By Stephen L. Fussell, Senior Consumer Protection Officer

a field investigator who performs face-to-face interviews, audits trust accounts and gathers information and documentation that may be needed to evaluate a complaint. In this type of investigation, the Auditor/Investigator typically will contact you to set up an interview.

After receiving your written response to the Commission's inquiry, it is evaluated it to determine any need for addi-

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...the Commission takes an objective, open-minded approach to investigating each complaint. Only cases involving sufficient, admissible evidence of a violation of the Real Estate License Law (Chapter 93A of the North Carolina General Statutes) or the Commission's rules result in disciplinary action.

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tional information and/or further investigation. Once the file provides a clear understanding of the facts, or in the case of a field investigation, after the report is completed, a decision is made to close the file with or without a warning or to forward the case to the members of the Commission to order its closing or to order an evidentiary hearing. Only Commission members can order a hearing against a broker or licensed firm. If the file is closed, you and the complaining witness will receive notification in writing of the decision.

When the Commission orders a hearing, the case is assigned to a staff attorney to prosecute on behalf of the Commission and you (or your attorney, if you have one) will be contacted to discuss your options for settling the matter.

If a settlement cannot be reached, then the Commission will hold the hearing, which is similar to a trial, except that the nine members of the Commission preside instead of a judge. After evidence is presented by the Commission's staff attorney and by you (or your attorney), the Commission members

will decide whether the evidence warrants disciplinary action and, if so, the appropriate action (reprimand, suspension, or revocation).

All disciplinary actions are published in the Commission's *Real Estate Bulletin*, which is sent by mail or email three times annually, and distributed to the North Carolina Association of REALTORS®, the Better Business Bureau in the area where the violation occurred, and the local board.

The Commission retains records of complaints filed against its licensees, and under state law, those files are public records. In the event that someone contacts the Commission to inquire about complaints filed against a broker, the Commission's staff will report the number of cases and their disposition, and will provide copies if requested to do so.

When a case is closed without any disciplinary action, the Commission's staff informs callers that the evidence of a violation was insufficient to warrant disciplinary action and that the mere fact that a complaint was filed does not necessarily mean that a broker engaged in misconduct.

In summary, the Commission takes an objective, open-minded approach to investigating each complaint. Only cases involving sufficient, admissible evidence of a violation of the Real Estate License Law (Chapter 93A of the North Carolina General Statutes) or the Commission's rules result in disciplinary action. If a broker has not committed a violation, there is nothing to fear from a complaint. Moreover, conducting your business with a focus on integrity and customer service will go a long way toward protecting you from ever receiving a complaint.



## Illegal Leases

(Continued from page 1)

their credit repair services were untrue. After many months of following the advice of credit counsellors, these consumers found themselves just as unqualified to purchase their home as they were when they first began their tenancy.

These firms and their brokers are no longer licensed because they were ignorant of, or simply did not adhere to, the regulations and statutes governing option contracts and credit repair services.

As a caution to anyone participating in a real estate transaction involving option contracts or promises of credit repair, this article will touch on the uses, regulations, and pitfalls that arise when the lease with option to purchase scenario is utilized.

We'll also consider the credit repair services these firms offered and things to know if approached with questions from one of your real estate clients.

### The Lease with an Option to Purchase

The tightening of residential mortgage lending following the recent economic downturn forced many homeowners to rent their homes when qualified buyers became scarce. Some builders and homeowners found tenants willing to pay an upfront, nonrefundable down payment to secure the right or option to purchase the property at a set price in the future. Such arrangements could legitimately provide the seller immediate cash and security in knowing that they had a good tenant in their home along with the expectation of a future closing.

Similarly, tenants who may have lost a job or gone through bankruptcy or a prior foreclosure were sometimes able to negotiate a competitive purchase price for a future closing, allowing them time to qualify for a mortgage.

In a typical, legitimate lease with option to purchase transaction, both the potential tenant-buyer and the seller risk losses in exchange for the promise of a future gain should the deal close. The tenant risks the non-refundable op-

tion fee, and the seller risks the possibility of a sale at a later date.

In the transactions investigated by the Commission, alleged "investors" offered to secure the tenant for the homeowner, and charged an upfront fee to the tenant for a future right to purchase the seller's home. In such cases, the "investor" risked nothing and had no motivation to ensure the success of the transaction or compliance with state laws. In fact, when a prospective purchaser defaulted under the option to purchase or lease, the "investors" kept the option fee, a new tenant was found and charged a new option fee also retained by the "investor." Therefore, failed transactions actually provided better opportunities for these "investors" to realize greater gains.

North Carolina General Statutes, Chapter 47G, govern every option contract executed along with a lease agreement. The law dictates that every such option contract contain at least nine (9) specific disclosures and details of the transaction. State law also provides every purchaser a three-day right to cancel such an option contract, and guarantees the right to a refund of any property exchanged or payments made by the purchasers if cancelled timely.

The seller is also required to record the option contract, or a memorandum of the same, in the office of the register of deeds in the county where the property is located. These are a few of the many statutory requirements in our State with which the disciplined real estate firms failed to comply.

### Credit Repair Providers

With very few exceptions, anyone offering credit repair programs must complete the promised programs prior to collecting or charging a fee. The firms that recently lost their licenses with the Commission charged upfront or monthly enrollment fees to participate in their advertised credit repair program.

The firms also falsely promised they could remove legitimate debts from consumer credit reports and gave decep-

tive advice on how to improve credit. While these guarantees were hollow, the promise of better credit was the hook for prospective purchasers who wanted to own a home now, but did not qualify for traditional financing.

There are two acts governing credit repair services in North Carolina. The first is the Federal Credit Repair Organizations Act, 15 U.S.C. 41, and the second is the North Carolina Credit Repair Services Act, N.C.G.S. § 66-220.

Both of these laws prohibit credit repair providers from making any statement or giving any advice that is untrue or misleading. They also require that credit repair companies make certain disclosures and give the opportunity to cancel a credit repair contract. Most importantly, the laws provide for civil liability for violations and protect consumers by making noncompliant contracts void.

When the Commission investigated the licensees offering credit repair, it found that not only were their services noncompliant with state and federal laws, but that the individuals were unaware of the strict regulation of their activities.

The Federal Trade Commission advises consumers that when they see the common claims and advertisements guaranteeing perfect credit in very little time, consumers should do themselves a favor, save the money, and avoid what's likely a scam. The only way to improve consumer credit is with time, effort, and a personal debt repayment plan.

Legitimate credit counselling providers are available through military bases, credit unions, non-profit groups, housing authorities, or consumer protection agencies.

There is also a list of government-approved organizations available at [www.usdoj.gov/ust](http://www.usdoj.gov/ust) that work with folks prior to filing bankruptcy. As a broker, if you have a client who requests help repairing credit, be sure to caution them about potential scams and suggest they contact their financial institution or consult the above government-approved list of providers.

# New Brokers-in Charge Should Review Trust Accounts When Taking Control

By *Emmet R. Wood, Chief Auditor,*  
and *Glenn M. Wylie, Consumer Protection Officer*

A new broker-in-charge for a firm that has trust accounts becomes responsible for those accounts from the date the BIC declaration form is signed. Before taking over as BIC of a firm with existing trust accounts, you should first ensure that the accounts are properly reconciled and fully funded. The following are some steps to take to get you started “on the right foot”:

At a minimum, the following trust account records should be present for each trust or escrow account maintained by the previous broker-in-charge:

- Receipts for cash payments of trust funds
- Deposit tickets
- Cancelled checks
- Journal or check stubs
- Sales transaction ledgers and/or property or owner ledgers for rentals
- Monthly bank reconciliations
- Monthly ledger trial balance

## **Obtain the most current trust account bank reconciliation.**

The most current trust account bank reconciliation should have been prepared by the previous BIC for the prior month, taking into consideration that the company may not receive the monthly trust account bank statement until several days into the current month. If the accounts have not been reconciled, you must do so immediately.

## **Examine the most recent trust account reconciliation for correctness and accuracy.**

- Make sure that the beginning bank balance on the bank reconciliation agrees with the ending balance on the trust account bank statement. Check the math for accuracy.
- Also check to be sure that the reconciled trust account bank balance on the bank reconciliation agrees with the journal balance and/or check stub balance as of the same cutoff date.
- Verify that any deposits-in-transit on last month's bank reconciliation have cleared the bank.

- Examine the outstanding checks for checks older than three months.
- Make sure there is a trial balance of the ledgers prepared as of the same cut-off date as the reconciled trust account bank balance. The total on the trial balance should agree with the trust account reconciled bank balance and with the journal and/or check stubs of the same cutoff date. Verify that there are ledgers for each line item on the trial balance.
- Examine the ledgers to determine the nature of funds on deposit, such as earnest money deposits, landlord rents, tenant security deposits or owner reserves. Are there unidentified funds in the account?
- Are there any ledgers with negative balances indicating deficit spending (spending more on a particular owner than what that owner has on deposit)? If so, this must be corrected immediately.

## **Examine transaction files.**

- Review open sales transaction files to ascertain if required documents such as listing agreement, buyer agency and dual agency agreements (if applicable), *Residential Property and Owners' Association Disclosure Statements* and *Working With Real Estate Agents* acknowledgments are in the files and completed properly.
- Do the offers state that the firm is holding the earnest money deposit? If so, are there ledgers for each of the sales transactions where the firm is holding earnest money?
- Are there copies of the earnest money deposit checks and due diligence checks?

## **Review rental property management files to make certain they contain required documents.**

Property management files should include:

- Property management agreements.
- Property management statements ac-

counting to the owner for rents. (These may be kept in the firm's trust accounting software. If so, a hard copy need not be in the owner's file as long as the statements are accessible.)

- Copies of invoices, bills and contracts paid from the trust account for the rental owner.
- Lease agreements.
- Security deposit checks received after April 1, 2013. (Commission rules changed on April 1, 2013 to require the retention of copies of security deposit checks.)

## **Verify the vendor list to ensure all are legitimate.**

- Do any vendors have a post office box and no physical address?
- Are there disbursements to vendors for round figures?
- Are there work orders and invoices for each disbursement to a vendor?
- Does the firm have staff in-house maintenance?
- Are there receipts for purchases and expenditures?
- Are there work orders and documentation (pictures, receipts, etc.) for maintenance performed?
- Do invoices fully document repairs and maintenance performed?

If you have problems performing the above procedures yourself, you may want to consider hiring an outside accountant or CPA to assist you. Make sure that the accountant or CPA you hire understands the Commission rules.

If you decide to become a BIC of a firm with inadequate trust account records, you must immediately perform these procedures and correct any deficiencies! You don't want any problems you inherit from the previous broker-in-charge to carry over and continue into your tenure as the broker-in-charge.

If further assistance is needed, do not hesitate to contact the Commission.

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# "Due Diligence" Questions & Answers

By Peter B. Myers, Information Officer

The Offer to Purchase and Contract form (North Carolina Association of REALTORS®/North Carolina State Bar Association Form 2-T) defines "Due Diligence" under Terms and Definitions at Paragraph 1(h) on the second page. An expanded explanation of the term and the effects of its use follow:

**Q: What is "Due Diligence"?**

**A:** "Due Diligence" is the buyer's opportunity to engage in a process of further investigation of the property and the transaction as described in the Offer to Purchase form within a period of time agreed to by the seller and buyer.

**Q: What might the buyer investigate during "Due Diligence"?**

**A:** The buyer will want to inquire about anything bearing on a decision to either move forward with the contract or to terminate it. Paragraph 4 of Form 2-T outlines many, but not all, common considerations of the "Due Diligence" process such as home, pest, and septic inspections, property survey, appraisal, title search, loan qualification and application, repair negotiation, etc.

**Q: How much time is allowed for the "Due Diligence" Process?**

**A:** The amount of time is negotiable but the period begins with the effective date of the contract. Paragraph 1(j) of Form 2-T will state the period's agreed upon ending date. Buyers should be certain to negotiate enough time to fully complete their inquiries - especially as related to appraisal and loan approval and any repairs discovered during property inspections.

**Q: What is the "Due Diligence" Fee?**

The fee, if any, is negotiated and paid by the buyer to the seller for the right to conduct "Due Diligence". The amount of the fee may be influenced by such matters as the market for the property, number of days on the market, personal circumstances of buyer and seller, and the length of the "Due Diligence" period.

**Q: Is there a limit to the repair items the buyer can ask the seller to perform?**

**A:** No. The buyer is free to ask for any number of things; however, the seller

is not obligated to agree to any of them. Repairs, if any, are completely negotiable.

**Q: If the buyer is not satisfied with the seller's response, or lack thereof, to repair requests, what can the buyer do?**

**A:** The buyer can terminate the contract or agree to move forward without the repairs.

**Q: Must the repairs be completed by the seller before the end of the "Due Diligence" period?**

**A:** No, but the seller is required to complete any repairs in a good and workmanlike manner prior to the settlement date. Failure by the seller to complete the repairs could result in a breach of the contract. (See paragraph 8(k) and (l) of Form 2-T).

## Assisting Buyers With "Due Diligence"

As a knowledgeable broker, you can be of great assistance to your buyers with these three critical points when they encounter "Due Diligence" for the first time in the Offer to Purchase and Contract.

□ **Due Diligence Fee:** Explain how this fee is affected by and results from negotiation involving many dynamic variables, including the length of the period, the amount of due diligence to be performed, and the cost and desirability of the property. Discuss those variables most pertinent to the circumstances of the property with the buyers.

□ **Due Diligence Process:** Help buyers with the list of inquiries so that it is complete and then guide them in determining the length of the due diligence period, especially when an appraisal and loan are involved.

□ **Due Diligence Period Expiration "Warning":** Go over the "Warning" text in paragraph 4 of Form 2-T so that your buyers understand they have a path out of the contract when they act in time if difficulties arise.

**Q: Must the seller allow the buyer to inspect the property to verify the repairs have been completed even if the "Due Diligence" period has expired?**

**A:** Yes. The buyer has the right to verify the repairs have been completed satisfactorily, during or after the "Due Diligence" period. The buyer also has the right to do a final walk-through. The seller's failure to permit the buyer to verify repairs or to do a final walk-through is a breach of the contract.

**Q: What happens at the end of the "Due Diligence" period?**

**A:** The buyer must make a decision to move forward with the contract or to terminate, so it's a good idea to discuss progress with the buyer as the end of the period approaches. There is a "Warning" to the buyer in paragraph 4 of Form 2-T advising termination if the seller does not agree to a requested extension of the "Due Diligence" period. The buyer's loss of the right to terminate for any or no reason then places the earnest money at stake. To avoid any misunderstandings, provide any extension agreed to by the seller to the buyer in writing.

**Q: If the buyer decides to terminate the contract under the "Due Diligence" clause, must the seller agree?**

**A:** No. It is the buyer's sole decision to make, assuming it is made during the "Due Diligence" period and not afterward. The termination is a notification to the seller, and must be in writing, but the buyer does not need the consent of the seller. It is a unilateral decision made by the buyer for any reason or no reason at all. The buyer typically gets back the earnest money but not the "Due Diligence" fee, unless otherwise negotiated.

For another discussion of Due Diligence, see pp 6-7 of the *Real Estate Bulletin* March 2011 Vol. 41, No. 3.

<http://www.ncrec.gov/Bulletin/pdf/March2011-Vol41-3.pdf>





## Commission

(Continued from page 1)

(NCREEA). He is a past president and member of the boards of directors of both the state and international Real Estate Educators Associations.

Bell is a member of the National Association of REALTORS® (NAR) and its Real Estate Brokerage Managers, Residential Specialist, and Real Estate Buyer's Agent Councils, Real Estate CyberSpace Society, and National Speakers Association. A licensed auctioneer, he is a member of the Auctioneer Association of North Carolina.

### Leonard H. "Tony" Craver, Jr.

Craver is owner and broker-in-charge of Craver Real Estate, LLC, in Durham, and has been active in the real estate business since 1967. He was awarded "REALTOR® Emeritus" by the National Association of REALTORS® in 2008.

Past president in 2005 of the Durham Regional Association of REAL-

TORS®, Craver received the association's "REALTOR® of the Year" award in 2007. He served on the North Carolina Association of REALTORS® Forms Committee for 12 years and as its Chairman in 2008-2009, was elected NCAR Region Four Vice President in 2011 and 2012, and received NCAR's Regional Service Award in 2012.

Craver is the author of *From the Ground Up – Building and Selling the American Dream*, a collection of stories about the building and real estate business. A graduate of Duke University with a BA in Economics and a varsity letter in tennis, he is married with four children and 10 grandchildren.

### Anna Gregory Wagoner

Wagoner is an attorney with the law firm of Blanco Tackabery & Matamoros in Winston-Salem and manages the firm's commercial title practice which includes title searches and recording in all 100 North Carolina counties.

Active in the practice of real estate

law for approximately 14 years, Wagoner was formerly associated as an attorney with Investors Title Insurance Company of Chapel Hill, the North Carolina Employment Security Commission, Fidelity National Title Insurance Company of Raleigh, SpectraSite Communications, Inc., of Cary, and Isaacson, Isaacson & Sheridan, L.L.P., of Greensboro.

Wagoner is a member of the North Carolina Bar Association, Forsyth County Bar Association, Piedmont Triad Commercial Real Estate Women, and the North Carolina Land Title Association. She is a former advisor to the A.E. Finley YMCA Leaders' Club, former tutor for the Literacy Council of Wake County, and former member of the Raleigh Jaycees.

She is a graduate of Wake Forest University with a BA in Psychology and holds a Juris Doctor degree from the Wake Forest University School of Law.

## New Design, Improvements for Commission Web Site

As the Bulletin was going to press, the Commission's newly designed Web site was being launched for the first time. Months in the making, the site has a new look and new features to facilitate its use by licensees and the general public.

Overall, users will experience faster and easier navigation among the site's various pages and an improved search function which locates information wherever it is located on the site.

The Home page, shown here, features drop-down menus for Licensing, Education, Commission, Publications, Re-

sources, Consumers and Forms. In the middle of the page are links to frequently accessed information relating to Rule/Law Changes, Licensees (licensee search databases), and What's New (Commission actions and activities).

The site is best visited with the use of

the Google Chrome or Firefox Mozilla browsers, but will work well with any other.

A new feature, FAQ's, provides commonly asked questions and answers by category (such as Applying for a license, Continuing Education, Legal General, Landlord/Tenant).

In addition, the site has been designed for display on mobile devices, automatically scaling to accommodate different screen proportions.

Users can tour the full range of the site's features and information through a special video available from the Home page.



**Free Publications****Quantity**Questions and Answers on:

Fair Housing

Tenant Security Deposits

Condos and Townhouses

Residential Subdivisions and Planned Communities

Purchasing Coastal Real Estate in North Carolina

Renting Residential Real Estate

N.C. Military Personnel Residential Lease Termination

Trato Con Agentes de Bienes Raíces  
(Working With Real Estate Agents)Preguntas y Respuestas sobre:  
(Questions and Answers On:)

Vivienda Justa (Fair Housing)

El Depósito de Seguridad del Inquilino (Tenant Security Deposits)

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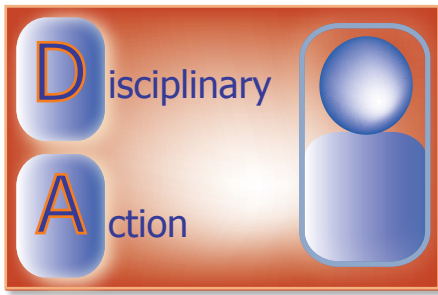
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*Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.*

**ANGELA BENNETT** (Asheville) – By Consent, the Commission revoked the broker license of Ms. Bennett effective January 16, 2014. The Commission found that, while working with vendors to make repairs on one or more REO properties held by Fannie Mae and listed by Ms. Bennett, Ms. Bennett requested reimbursement for payments to vendors which she had not made; that in one instance, Ms. Bennett accepted Fannie Mae's reimbursement of approximately \$8,140 for mold remediation on a home after she falsely reported that she had paid the vendor; that, after Ms. Bennett had moved to a new firm, the mold remediation vendor contacted the new firm and requested payment for the unpaid invoice; that Ms. Bennett intentionally omitted telling her new firm that Fannie Mae had already reimbursed for the vendor's work; and that Ms. Bennett's new firm paid the vendor based on Ms. Bennett's false representation that Fannie Mae would reimburse the firm. The Commission noted that Ms. Bennett has reimbursed the firm for the funds it remitted to vendors on her behalf.

**HEATHER LYNNE BROOKS** (Greensboro) – By Consent, the Commission suspended the broker license of Ms. Brooks for a period of six months effective January 1, 2014. The Commission found that Ms. Brooks listed a property for sale and subsequently accepted an offer to purchase on behalf of her seller client, but she failed to return an executed copy to the buyer's agent; that Ms. Brooks instructed the buy-

er's agent to mail the earnest money check to her personal residence; and that when the buyer terminated the transaction based on results of the home inspection, Ms. Brooks failed to refund the earnest money deposit or provide an accounting of the funds, claiming she never received



it. The Commission also found that Ms. Brooks continued to advertise her real estate services through her Web site, although her real estate license went on inactive status July 1, 2013.

**KRYSTAL P. BROYHILL** (Conover) – By Consent, the Commission suspended the broker license of Ms. Broyhill for a period of two years effective November 1, 2013. Six months of the suspension are to be active with the remainder stayed under certain conditions. The Commission found that Ms. Broyhill served as a right-of-way agent with the North Carolina Department of Transportation (NCDOT) and contacted an individual to provide assistance with relocation as part of a NCDOT highway project, and that

Ms. Broyhill failed to provide the individual with a copy of the *Working With Real Estate Agents* brochure. Ms. Broyhill disputed the findings and the action taken against her license, but entered into a Consent Agreement to avoid the cost and expense of a hearing and to move forward and fully resolve the matter.

**RYAN DANIEL CIESLAK** (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Cieslak for a period of 24 months effective March 1, 2014. The Commission then stayed the suspension for a probationary period of 24 months. The Commission found that Mr. Cieslak, acting as qualifying broker and broker-in-charge of a property management firm, failed to supervise unlicensed employees who performed property management duties including advertising rental property, negotiating leases and collecting tenant security deposits and rental payments; failed to oversee maintenance of the firm's trust accounts which were being maintained by the unlicensed employees; and failed to inform clients or the Commission that the firm was ceasing property management enabling the unlicensed employees to continue using the name and providing services to the same clients when they formed a new firm with a new broker-in-charge.

**JASON COX** (Graham) – Following a hearing, the Commission suspended the broker license of Mr. Cox for a period of 24 months effective November 1, 2013. Ten months  
*(Continued)*



## Licensees Must Report Convictions

Commission Rule A.0113 requires any licensee who is convicted of a misdemeanor or felony or who has disciplinary action taken against him or her by any occupational licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired ("DWI"). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission's Legal Division at 919-875-3700 for more information.

of the suspension are active with the remainder stayed for a probationary period on certain conditions. The Commission found that Mr. Cox acted as listing agent for various lenders to list and market REO properties; that Mr. Cox, through related entities, purchased REO properties from his clients for below-market prices and then resold the properties for a profit; that Mr. Cox failed to disclose his association with these related entities to some of his clients; and that Mr. Cox represented buyers and sellers in the same transactions without written consent for dual agency by both parties. The Commission further found that Mr. Cox maintained only one firm office, but advertised having numerous office locations in order to give potential lender clients the impression that there was a physical address in the locality. The Commission noted that Mr. Cox has changed the firm's business model, settled a dispute with a bank, and continues to represent the same lenders with no additional complaints.

**EAST COAST REO, LLC** (Graham) – Following a hearing, the Commission reprimanded the bro-

kerage firm of East Coast REO effective December 27, 2013. The Commission found that East Coast REO contracted as listing agent for various mortgage lenders to list and market REO properties; that East Coast REO's broker-in-charge, Jason Cox, acting through related entities, purchased REO properties from East Coast REO's clients for below-market prices and then resold the properties for a profit; that East Coast REO failed to disclose Mr. Cox's association with these related entities to some of its clients; and that East Coast REO represented buyers and sellers in the same transactions without written consent for dual agency by both parties. The Commission further found that East Coast REO maintained only one firm office, but advertised having numerous office locations in order to give potential lender clients the impression that there was a physical address in the locality. The Commission noted that East Coast REO has changed its business model, settled a dispute with a bank, and continues to represent the same lenders with no additional complaints.

**ELIZABETH A. GIRI** (Pinehurst) – Following a hearing, the Commission suspended the broker license of Ms. Giri for one year effective June 1, 2013. Six months of the suspension were active with the remainder stayed with a probationary period ending May 31, 2014. The Commission found that Ms. Giri, acting as the owner of a building contracting and real estate firm, collected a \$2,200 tenant security deposit for property the firm owned from a prospective tenant, but failed to return the deposit when requested after it was determined that the property was not suitable for the prospective tenant's needs. The Commission also found that Ms. Giri, who had declared herself broker-in-charge of her sole proprietorship in April 2003, allowed her license to expire in June 2003; and that when Ms.

Giri reactivated her license in July 2003, she failed to designate herself as broker-in-charge; and that her license has remained active but unaffiliated since then.

**GREENPOINT OF THE CAROLINAS LLC** (Charlotte) – By Consent, the Commission revoked the firm license of Greenpoint of the Carolinas effective December 11, 2013. The Commission found that Greenpoint of the Carolinas, a property management and general brokerage firm, entered into a number of property management agreements with landlord clients, but failed to remit collected rental proceeds to its clients and allowed trust monies to be converted to the benefit of the firm's unlicensed manager.

**EARL S. HORNE** (Blowing Rock) – By Consent, the Commission revoked the broker license of Mr. Horne effective January 16, 2014. The Commission found that Mr. Horne provided property management services through a formerly licensed real estate company which had been administratively dissolved by the North Carolina Secretary of State; and that Mr. Horne collected

*(Continued)*

• • • • •  
• Your Pocket License Card •  
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• Allow at least 10 days to •  
• process a replacement request •  
• or •  
• purchase and download •  
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• from the Commission's Web site. •  
• • • • •

rents on behalf of landlord clients, but failed to remit the rents to the appropriate parties. The Commission also found that Mr. Horne failed to respond to Letters of Inquiry received from the Commission.

**CAROLANNE HORNE** (Blowing Rock) – By Consent, the Commission revoked the broker license of Ms. Horne effective January 16, 2014. The Commission found that Ms. Horne, acting as qualifying broker and broker-in-charge of a formerly licensed firm which had been administratively dissolved by the North Carolina Secretary of State, continued to provide property management services through the dissolved firm; that Ms. Horne failed to maintain trust accounts in compliance with Commission rules; and that rents collected by the firm on behalf of clients were not disbursed pursuant to Commission rules.

**JOHN NICHOLAS HRUSKA** (Huntersville) – By Consent, the Commission suspended the broker license of Mr. Hruska for a period of nine months effective February 1, 2014. The Commission then stayed the suspension for a probationary period of nine months. The Commission found that Mr. Hruska, acting as manager, qualifying broker, and broker-in-charge of a licensed property management firm formed by an unlicensed individual, failed to perform the supervisory requirements of a BIC and failed to oversee the activities of the firm's unlicensed member/manager who advertised rental properties, signed lease agreements, and collected tenant security deposits and rental payments. The Commission also found that Mr. Hruska failed to oversee the firm's trust accounts which were being maintained by the unlicensed member/manager. The Commission noted that Mr. Hruska left the firm after four months.

**SHEILA J. HUDSON** (China Grove) – By Consent, the Commission revoked the broker license of Ms. Hudson effective January 16, 2014. The Commission found that Ms. Hudson requested a showing of a property and then viewed the property alone, and that a laptop, which was in operation inside the home, recorded video footage of the

**Receive Credit  
Where and When  
Credit is Due!**

When continuing education sponsors fail to report credits to the Commission in a timely manner, licensees may find themselves on Inactive Status on July 1.

You can avoid this problem by going online to the Commission Web site, [www.ncrec.gov](http://www.ncrec.gov), to verify your CE credits.

kitchen area which tended to show Ms. Hudson opening cabinets in the kitchen and reviewing certain medications belonging to the homeowner.

**EDWARD A. KEARNS** (Lexington) – By Consent, the Commission suspended the broker license of Mr. Kearns for a period of three months effective January 1, 2014. The Commission then stayed the suspension under certain conditions. The Commission found that Mr. Kearns made offers on short sale properties requiring that all subsequent offers submitted on the property be directed to Mr. Kearns, and not be shared with the short sale lender, and that Mr. Kearns received subsequent offers that he failed to forward to the appropriate short sale lender. The Commission also found that Mr. Kearns, in other transactions, incorrectly advised clients to put properties in *inter vivos* trusts pursuant to the Garn-St. Germain Depository

Institutions Act of 1982 with false assurances that such transfers would not trigger the due-on-sale clause of the client's mortgage.

**DAVID R. KLARMANN** (Pittsboro) – By Consent, the Commission suspended the broker license of Mr. Klarmann for a period of one year effective December 1, 2013. The Commission then stayed the suspension for a probationary period ending November 30, 2014. The Commission found that Mr. Klarmann, engaged in real estate development and property management, developed his own personal land into a residential subdivision and established a homeowners association (HOA) for the neighborhood; that Mr. Klarmann managed the seven-property HOA until he turned over management to the homeowners in 2011; and that while Mr. Klarmann was manager for the HOA, he failed to maintain records in compliance with the Real Estate License Law and Commission rules which resulted in the mismanagement of the HOA's funds. The Commission noted that Mr. Klarmann has arranged repayment to the HOA.

**RONALD C. MCCLURE** (Andrews) – By Consent, the Commission reprimanded Mr. McClure effective November 1, 2013. The Commission found that Mr. McClure, acting as listing agent in the sale of a rural cabin, received a Residential Property Disclosure Statement from the sellers who did not answer a question on the form about easements and shared driveways; that Mr. McClure failed to verify the status of easements and right-of-ways on the property and falsely represented that the property was serviced by an established right-of-way on a privately owned road; that one month after the buyers closed on the property, heavy rains damaged the road, making it impassable, after which the owner of the road blocked

(Continued)

## Watch for Emails From the Commission

The Commission is using emails with increasing frequency to communicate important information to brokers and brokers-in-charge.

Be alert for messages from the Commission in your inbox. They will always be identified as coming from the North Carolina Real Estate Commission.

it and refused permission to use it; that, in fact, there was no easement or deeded right-of-way for the property at that location; and that the buyers have been unable to access the property since January 2013.

**NETWORTH INVESTMENTS LLC** (Charlotte) – By Consent, the Commission suspended the firm license of Networth Investments for a period of 24 months effective March 1, 2014. The Commission then stayed the suspension for a probationary period of 24 months. The Commission found that Networth Investments, a property management firm, failed to supervise unlicensed employees who performed property management duties including advertising rental property, negotiating leases and collecting tenant security deposits and rental payments; failed to oversee maintenance of the firm's trust accounts which were being maintained by the unlicensed employees; and failed to inform clients or the Commission that the firm was ceasing property management enabling the unlicensed employees to continue using the name and providing services to the same clients when they formed a new firm with a new broker-in-charge.

**MARC S. PARHAM** (Morganton) – Following a hearing, the Commission revoked the broker license of Mr. Parham effective November

14, 2013. The Commission found that Mr. Parham, while engaged in the property management business as broker-in-charge (BIC) of his sole proprietorship, entered into a property management agreement with a landlord owner, and failed to account for or remit within a reasonable time any monies coming into his possession which belonged to others; that Mr. Parham failed to maintain and deposit in a trust or escrow account all money received by him as a real estate licensee; and that Mr. Parham violated Commission rules by failing to deposit and maintain funds he received while acting in a fiduciary capacity, failing to make his records available for inspection by the Commission, failing to safeguard the money of others coming into his possession, failing to maintain the trust or escrow account as BIC of his own sole proprietorship, and failing to properly retain and maintain records relating to transactions conducted through his sole proprietorship.

**PETER A. SPRAGUE** (Cary) – By Consent, the Commission revoked the broker license of Mr. Sprague effective November 14, 2013. The Commission found that Mr. Sprague, as broker-in-charge of a sole proprietorship rental property management business, failed to timely send rental proceeds or provide an accounting for the funds to his landlord client and failed to comply with a Commission request for records, which had to be subpoenaed from Mr. Sprague's bank. The Commission also found that a number of checks were written from Mr. Sprague's trust account to cash or to Mr. Sprague's sole proprietorship, including \$2,500 in March 2012 and \$1,504 in April 2012.

**SOUTHEASTERN WATERFRONT MARKETING INC.** (Charlotte) – The Commission accepted the permanent voluntary surrender of the firm license of

Southeastern Waterfront Marketing effective December 11, 2013. Southeastern Waterfront Marketing, Inc., denied allegations that it violated provisions of the Real Estate License Law and Commission rules. The Commission dismissed the case but reserved the right to re-examine those allegations only in any potential application for a broker or other license.

**JOHN W. SPIVEY** (Sanford) – By Consent, the Commission suspended the broker license of Mr. Spivey for a period of six months effective January 1, 2014. The Commission found that Mr. Spivey was secretary-treasurer of a firm which sold a property in July 2008 to a buyer who entered into a 20-year contract for deed with the firm; that the buyer paid the seller firm a \$10,000 down payment and Mr. Spivey collected monthly payments of \$1,000 from the buyer; that in July 2011, the lender foreclosed on the subject property and that Mr. Spivey failed to disclose the foreclosure to the buyer and continued to collect the \$1,000 monthly payments from the buyer until January 2012.

**H. CHRISTOPHER THOMPSON** (Greensboro) – By Consent,  
(Continued)

## Your Email Address: Public or Private?

You now have the option to designate your email address or addresses on file with the Commission as "public" or "private - for Commission use". Your "private" email address will be used by the Commission to communicate with you, and will not be disseminated to anyone. Your "public" email will be provided on request to others such as schools to send you CE information.

To make your selection, log in to and update your record.

the Commission revoked the broker license of Mr. Thompson effective January 16, 2014. The Commission found that Mr. Thompson, acting as broker-in-charge of a real estate brokerage firm, failed to maintain his firm's trust account records in compliance with Commission rules, failed to perform reconciliations, and had a negative bank balance in the firm's trust account. The Commission also found that Mr. Thompson failed to remit owner proceeds and tenant security deposits and sent multiple NSF checks to clients.

**GRADY F. WATKINS, JR.** (Southport) – By Consent, the Commission reprimanded Mr. Watkins effective December 1, 2013. The Commission found that Mr. Watkins performed 200 Broker Price Opinions between 2009 and 2012 and received only five listing agreements for the sale of the properties. The Commission also found that Mr. Watkins failed to report to the Commission the surrender of his firm's general contractor's license in a disciplinary action brought by the NC Licensing Board for General Contractors resulting from Mr. Watkins' collection of a \$16,000 client deposit from a client and his failure to refund the deposit or provide an accounting for his use of the funds.

**LYNSEY J. WEBER** (Matthews) – By Consent, the Commission granted reinstatement of the broker license of Ms. Weber effective December 11, 2013 and then immediately suspended the license for a period of three years. The Commission then stayed the suspension for a probationary period through and including December 31, 2016 under certain conditions. The Commission found that Ms. Weber failed to renew her license and her firm's license on June 30, 2012, but continued to conduct real estate brokerage individually and through her firm until May, 2013, when she learned both licenses were expired. The Com-

mission noted that no clients were harmed as a result.

**ELIZABETH E. WHITCRAFT** (Kill Devil Hills) – The Commission accepted the permanent voluntary surrender of the broker license and instructor approval of Ms. Whit-

craft effective November 13, 2013. The Commission dismissed without prejudice allegations that Ms. Whitcraft violated provisions of the Real Estate License Law and Commission rules. Ms. Whitcraft neither admitted nor denied misconduct.

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